

Initiative to Develop Section 106/Arizona State Historic Preservation Act Programmatic Agreements among FHWA, ADOT, and Tribes

Summary: FHWA and ADOT are initiating efforts to develop Programmatic Agreements among the Federal Highway Administration, the Arizona Department of Transportation, and Tribes with aboriginal claims within the state of Arizona.

Statement of Intent: Transportation improvement projects have the potential to destroy or adversely impact significant cultural resources. Federal, state, and tribal governments acknowledge the need to preserve their historical and cultural heritage by eliminating or minimizing impacts to significant historical and cultural resources and places. To achieve this goal, and pursuant to federal and state historic preservation laws, the Federal Highway Administration, Arizona Division, and the Arizona Department of Transportation regularly engage in consultation with tribes regarding the potential effects of transportation projects on resources that may be of importance or significance to tribal communities.

Although these consultation efforts satisfy both agencies' legal obligations, FHWA and ADOT believe that the consultation process can be improved through the development of formalized programmatic agreements (PAs) with each tribe. By tailoring consultation efforts to the interests and needs of each tribal community, programmatic agreements could streamline the compliance process under both the federal and state acts, facilitate meaningful communication, and reinforce and sustain a renewed relationship of mutual trust and respect among all parties.

PAs can be used to establish a custom-designed Section 106/Arizona State Historic Preservation Act process for an agency program, for common types of undertakings (such as routine maintenance), and when a category or group of projects results in similar and repetitive effects on historic properties. PAs replace case-by-case consultation and compliance with a programmatic approach. Seventeen examples of current federal/state/tribal Section 106 PAs can be found on the American Association of State Highway Transportation Officials (AASHTO), Center for Environmental Excellence website:

http://environment.transportation.org/pal_database/view_agreements.aspx.

Current Efforts: Over the past month, FHWA and ADOT leadership have committed federal and state staff time and funding to develop programmatic agreements with tribes as part of a greater effort to streamline the environmental compliance process. Specifically, these programmatic agreements will address matters related to Section 106 of the National Historic Preservation Act and the Arizona State Historic Preservation Act. Preliminary goals of the Agreements are to:

- Tailor the Section 106/Arizona State Historic Preservation Act consultation process so that it is meaningful to each tribe, and mutually beneficial, inclusive, and meets agency and tribal needs;

- Streamline Section 106/Arizona State Historic Preservation Act consultation to make it more efficient for agencies and tribes;
- Ensure reciprocal information sharing and relationship building;
- Clarify types of “resources” and places of concern consistent with each tribe’s and each agency’s worldview/point of view and determine what methodologies should be used for effectively identifying and evaluating resource/place of concern;
- Clarify each tribe’s areas of geographic concern for consultation purposes;
- Clarify types or categories of projects/undertakings for which each tribe would like 1) notice of, 2) consultation about, or 3) no contact;
- Explore the usefulness and possibilities for using web-based tools for communicating project information and soliciting response.

FHWA and ADOT have recently engaged the services of the U.S. Institute for Environmental Conflict Resolution to assist in us in organizing and mediating collaborative workshops among agencies and tribes. The first workshop will be designed to begin a dialog among all parties that we hope will result in development of statewide, regional, or individual Programmatic Agreements to tailor the Section 106/Arizona State Historic Preservation Act consultation and compliance process with each participating tribe. Our initial task is to establish a core team to plan and organize the first workshop. We are seeking tribal and agency representatives to serve on the core team, who have the time to commit to seeing this initiative through to a final positive outcome. If you are interested in participating on the core planning team, or would like further information, please contact one of the following individuals:

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